



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

William J. McGinley, Esq.
Ann M. Donaldson, Esq.
Jones Day
51 Louisiana Avenue, N.W.
Washington, D.C. 20001

MAR 25 2016

RE: MUR 6784
Lizbeth Benacquisto
Lizbeth Benacquisto for Senate
and Gary S. Splain in his official
capacity as treasurer
Lizbeth Benacquisto for Congress
and Nancy H. Watkins in her official
capacity as treasurer

Dear Mr. McGinley and Ms. Donaldson:

On February 26, 2014, the Federal Election Commission notified your above-referenced clients of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act").

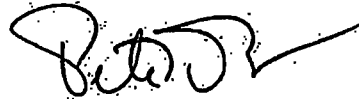
On March 15, 2016, the Commission found, on the basis of the information in the complaint and information provided by your clients that there is no reason to believe that Lizbeth Benacquisto, Lizbeth Benacquisto for Congress and Nancy H. Watkins in her official capacity as treasurer, and Lizbeth Benacquisto for Senate and Gary S. Splain in his official capacity violated 11 C.F.R. § 110.3(d) with respect to the use of images from state campaign advertisements. In addition, the Commission was equally divided on whether to find no reason to believe that: Lizbeth Benacquisto violated 52 U.S.C. § 301259 or 11 C.F.R. § 110.3(d); Lizbeth Benacquisto for Congress and Nancy H. Watkins in her official capacity as treasurer violated 52 U.S.C. §§ 30103(a), 30125(e)(1) or 11 C.F.R. § 110.3(d); and Lizbeth Benacquisto for Senate and Gary S. Splain in his official capacity violated 52 U.S.C. § 30125(e)(1) or 11 C.F.R. § 110.3(d) with respect to the other allegations in the complaint. Accordingly, the Commission closed its file in this matter as to all Respondents. The Factual and Legal Analysis, which more fully explains the basis for the Commission's decision on the use of images is enclosed.

Documents related to the case will be placed on the public record within 30 days.
See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files,

68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009).

If you have any questions, please contact Dominique Dillenseger, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter G. Blumberg", with a long horizontal stroke extending to the right.

Peter G. Blumberg
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Lizbeth Benacquisto
Lizbeth Benacquisto for Senate and
Gary S. Splain in his official capacity as treasurer
Lizbeth Benacquisto for Congress and
Nancy H. Watkins in her official capacity as treasurer

MUR 6784

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission (the "Commission") by Nick Maietta, alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by Lizbeth Benacquisto, Lizbeth Benacquisto for Senate and Gary S. Splain in his official capacity as treasurer, and Lizbeth Benacquisto for Congress and Nancy H. Watkins in her official capacity as treasurer.

Lizbeth Benacquisto is a Florida State Senator who was a candidate for the Nineteenth Congressional District of Florida in an April 22, 2014 Special Primary Election to replace Trey Radel, who resigned from the seat on January 27, 2014. Lizbeth Benacquisto for Congress (the "Federal Committee") is Benacquisto's federal authorized committee and Lizbeth Benacquisto for Senate (the "State Committee") is her state committee. The Complaint in this matter alleges that an impermissible transfer of value from the state to the federal campaign may have occurred because images used in the state senate campaign television advertisements later appeared in television advertisements for the federal campaign.¹

In a joint response, Respondents deny the allegations that Benacquisto and the Federal Committee received a prohibited transfer of funds or assets from the State Committee, asserting that the Federal Committee paid fair market value for the State Committee assets it used and

¹ Compl. at 4-8 (Feb. 19, 2014).

properly reported these expenditures.¹ As discussed below, the Commission finds no reason to believe that Respondents violated 11 C.F.R. § 110.3(d) in connection with the alleged transfer of funds or assets described in the Complaint.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

Benacquisto is a Florida State Senator, representing District 30 since her election in 2010. She sought reelection to the Senate in the 2014 state election.² In October 2013, Congressman Trey Radel was arrested for purchasing cocaine from a DEA agent. On January 27, 2014, Radel tendered his resignation from Congress.⁴ On February 3, 2014, Benacquisto announced her candidacy for the April 22, 2014 Special Primary Election to replace Radel.⁵ On the same day, Benacquisto launched a website “lizbethforcongress.com,” and filed a Statement of Candidacy and Statement of Organization forming Lizbeth Benacquisto for Congress.⁶ The domain name “LizbethforCongress.com” was registered with GoDaddy.com on December 30, 2013.

From January 6 to February 2, 2014, the month before Benacquisto formally declared her candidacy for federal office, the State Committee ran television and radio advertisements concerning Benacquisto’s accomplishments as a state official.⁷ State Committee disclosure reports show a \$10,000 disbursement to Meteoric Media Strategies for “media production” on December 9, 2013 and a \$167,500 disbursement to McLaughlin and Associates for “media

¹ Resp. at 1 (Apr. 28, 2014).

² *Id.* at 2, Attach. A, B.

⁴ Compl. at 2.

⁵ Resp. at 3.

⁶ See Compl. at 1; Resp. at 3.

⁷ Resp. at 2.

advertising” on January 2, 2014.⁸ The advertisements included a disclaimer indicating that the state senate campaign paid for the ads. A transcript of the advertisements follows:

“Trusted Voice” — FL State Campaign TV Advertisement⁹

VIDEO	AUDIO
<i>Video clip of Benacquisto with veterans.</i> <i>On-screen news banner: A TRUSTED VOICE</i> <i>Caption: LIZBETH BENACQUISTO</i>	[Voiceover:] <i>Lizbeth Benacquisto, southwest Florida's conservative voice . . .</i>
<i>Video clip of Benacquisto in various locations interacting with different groups of people (veterans, seniors, workplace/employees, playground/children).</i> <i>On-screen news banners: CONSERVATIVE, BALANCED BUDGET, CUTTING TAXES, FOR OUR SENIORS, FOR OUR FUTURE</i> <i>Caption: LIZBETH BENACQUISTO</i>	[Benacquisto:] <i>In Florida, conservative values are getting us back on track — reducing spending to balance the budget and cutting taxes so you can keep more of the money you've earned. I fought to protect seniors and honor Florida's veterans — all while making sure the next generations have the tools they need to succeed.</i>
<i>Video clip of Benacquisto with miscellaneous people.</i> <i>On screen news banners: THE NEWS-PRESS "IN SOUTHWEST FLORIDA, BENACQUISTO LIVES BY THE CREDO OF GIVING." - DECEMBER 27, PAID BY LIZBETH BENACQUISTO, REPUBLICAN FOR STATE SENATE, DISTRICT 30</i> <i>Caption: LIZBETH BENACQUISTO, LIZBETH BENACQUISTO FOR STATE SENATE.</i>	[Voiceover:] <i>Lizbeth has been recognized for her public service and her commitment to us. Lizbeth Benacquisto.</i>

The Complaint alleges that the federal campaign used the images from the state campaign advertisements in later federal campaign ads:

⁸ See Florida Department of State, Division of Elections, 2014 General Election Expenditures for Lizbeth Benacquisto, <http://election.dos.state.fl.us/cgi-bin/expend.exe>.

⁹ See Resp. at 2-3; http://www.youtube.com/watch?v=3uu_mjWpObs.

B. Legal Analysis

1. Nonfederal Funds

The Act restricts certain uses of nonfederal funds,¹¹ including corporate funds, by federal candidates.¹² Specifically, the Act prohibits federal candidates, their agents, and entities directly or indirectly established, financed, maintained, or controlled by federal candidates from soliciting, receiving, directing, transferring, or spending funds in connection with an election for federal office, including funds for any federal election activity, unless the funds are subject to the limitations, prohibitions, and reporting requirements of the Act.¹³ Florida law allows state candidates to accept contributions from corporations and unions.¹⁴ Thus, contributions made to Benacquisto's Florida state committee are not subject to the prohibitions of the Act.¹⁵ Further, Commission regulations prohibit the transfer of funds or assets from a candidate's campaign committee for a nonfederal election to his or her principal campaign committee.¹⁶

Respondents assert that no improper transfer of assets or value occurred here because the Federal Committee paid fair market value for the State Committee assets it used and properly reported those expenditures.

The Complaint asserts that an impermissible transfer of value may have occurred because images used in the state senate campaign television advertisements later appeared in television advertisements for the federal campaign. Images from the state advertisements showing

¹¹ "Federal" funds are "funds that comply with the limitations, prohibitions, and reporting requirements of the Act." 11 C.F.R. § 300.2(g).

¹² See 52 U.S.C. § 30125(c)(1)(A); 11 C.F.R. § 300.61.

¹³ 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. § 300.61.

¹⁴ FLA. STAT. §§ 106.08, 106.11 (2013).

¹⁵ See 52 U.S.C. § 30118. The State Committee disclosed the receipt of contributions from sources that would be prohibited under the Act.

¹⁶ 11 C.F.R. § 110.3(d).

Benacquisto interacting with or talking to various groups of persons — *e.g.*, seniors, veterans, and employees of a business — also appeared in advertisements that ran during Benacquisto's federal campaign.

The Commission has permitted the transfer of a nonfederal committee's assets to the campaign committee of a candidate for federal office where the federal committee pays the fair market value or the "usual and normal charge" for the use of such assets.¹⁷ When the state committee does not own the asset, the federal committee must pay the usual and normal charge for use of the asset to the proper owner.¹⁸

Respondents acknowledge that the Federal Committee used certain images that the State Committee used as well, but note that the images were owned by the vendor, Meteoric Media, which retained "ownership and all rights to the video footage and audio recordings . . . in perpetuity."¹⁹ Meteoric Media's invoice to the State Committee for production indicates "Licensing the video footage and audio recordings for broadcast use will incur additional fees and is solely at the discretion of Meteoric Media Strategies, LLC."²⁰ Respondents also provided copies of the invoices and disclosure reports reflecting the Federal Committee's payment to Meteoric Media and assert that because the Federal Committee paid fair market value to a third

¹⁷ Transfer of Funds from State to Federal Campaigns, 58 Fed. Reg. 3474, 3475 (Jan. 8, 1993) ("the rule should not be read to proscribe the sale of assets by the state campaign committee to the federal campaign committee, so long as those assets are sold at fair market value"); *see also* Statement of Reasons of Comm'rs Walther, Petersen, Bauerly, Hunter, and Weintraub, MUR 5964 (Schock for Congress) (permitting the transfer of a nonfederal committee's assets to the campaign committee of a candidate for federal office when such transfer was conducted under current market practices and at the usual and normal charges). The Commission's regulations define "usual and normal charge" as "the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution." 11 C.F.R. § 100.52(d)(2).

¹⁸ *See* 11 C.F.R. § 100.52(d).

¹⁹ Resp. at 11-12.

²⁰ *See* Resp. at 3, Attach. D, Meteoric Media Strategies Invoice to Lizbeth Benacquisto for State Senate (Dec. 5, 2013).

party for the use of the images, there was no impermissible transfer of any asset between the committees.²¹

The Complaint does not allege nor does the available information indicate that the Federal Committee's payments for the use of the challenged images were not made under current market practices and at the usual and normal charges.²² Therefore, the Commission finds no reason to believe that Respondents violated 11 C.F.R. § 110.3(d).

²¹ See Resp. at 4, 12, Attach. E, 2014 Pre-Primary Report, Transactions D68-000501, D69-000502; Meteoric Media Invoices (Feb. 3, 2014, Mar. 18, 2014).

²² *Id.* at 12.